IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.943 OF 2005

Shri Yashwant Vaktavarmal Jain : Petitioner

V/s.

Shri Pukharaj Rupchand Jain, since deceased through legal heir:

Shri Gulabhai Pukharaj Jain & Ors. : Respondents

...

Mr.S.D.Patil for the petitioner.

Mr.K.S.Dawal for the respondent no.1.

...

CORAM : S.A. BOBDE, J.

July 4, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Dawal, learned counsel, appears and waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner has challenged the order of the Addl. Commissioner, Konkan Division, Mumbai, dated 13.12.2004 allowing the respondent no.1's revision in RTS proceedings.

3. Mr.Patil, learned counsel for the petitioner, contended that the impugned order is a nullity since, according to him, it is passed in a third revision. According to the learned counsel, this objection was specifically raised before the learned Commissioner as is apparent from the order at exh.'F' to this petition. However, it appears from the order of the Commissioner that the learned Commissioner has given several other findings but has not given a clear and categorical finding on the objection to jurisdiction raised by the petitioner on the basis of a judgment of this Court.

4. Accordingly, the impugned order is set aside. The matter is remanded back to the Additional Commissioner, Konkan Division, for a fresh decision, in accordance with law. The learned Addl. Commissioner is directed to decide the matter within a period of six months from today. It is made clear that the order is set aside on this point alone and the learned Commissioner is free to decide the matter, if he comes to the conclusion that he has jurisdiction; on merits.

5. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.